

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

U.S. ex rel J.G. Turner et al.,
Petitioner,

-v-

Donald A. Hulick et al.,
Respondents.

FILED

JUN 19 2008 *allw*

No. 08 C 2264

6-19-2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

The Honorable
John W. Darrach, U.S. Judge
Magistrate Judge Mason
Judges presiding.

MOTION FOR VOLUNTARY DISMISSAL OF INSTANT APPEAL

COME NOW the petitioner James G. Turner et al. Pro Se, and respectfully move this Honorable Court to dismiss instant appeal for cause, as follows:

1. Following Appellate Court of Illinois denying him leave to Appeal, petitioner filed a Petition For Rehearing. However, Appellate Court promptly denied Petition for Rehearing but, clerk of the Court failed to notify petitioner for (11) months.

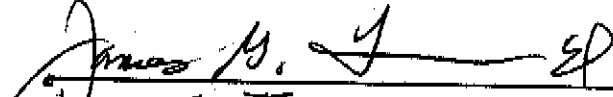
2. Upon learning his Petition for Rehearing had been denied (11) months earlier, petitioner thought it fruitless to bring a late appeal to the Illinois Supreme Court and brought Federal Habeas Petition in this Court instead.

3. Upon learning that he had procedurally defaulted by not taking late Appeal to the Illinois Supreme Court, petitioner filed a late Appeal with the Illinois Supreme Court and brought motion in this Court to hold proceedings in abeyance pending judgement on late appeal. But, this Court dismissed appeal (correction Habeas Petition as successive).

4. Late Petition for leave to Appeal to Illinois Supreme remains pending in Illinois Supreme Court and appeal herein would be a procedural default also. Accordingly, petitioner voluntarily moves to dismiss instant appeal.

WHEREFORE, petitioner prays this Honorable Court grant him leave to voluntarily dismiss appeal in procedural default.

Respectfully submitted,


James G. Turner, Jr.
X-01161

M.C.C.
P.O. Box 711
Menard, IL 62559

STATE OF ILLINOIS)

) SS

COUNTY OF RANDOLPH)**AFFIDAVIT**

I, James G. Turner - ee being first duly sworn upon my oath depose and state that the following matters are both true and correct made upon personal knowledge and belief, and if called as a witness, I am competent to testify thereto: 1. That I am a prisoner in the custody of the Illinois Department of Corrections at the Menard Correctional Center.

2. That following Circuit Court of Cook County denying Post-Conviction Petition May 10, 2006, I promptly took appeal, but inadvertently mailed to the Clerk of the Court, Motion(s) to Proceed In Forma Pauperis on Appeal, For Appointment of Counsel on Appeal, For Transmission of Record on Appeal, Notice / Proof of Service, but left off Notice of Appeal.

3. Clerk of Circuit Court promptly returned all documents to me unfiled advising of my failure to include Notice of Appeal, I promptly attached Notice of Appeal and remailed to the clerk of the circuit court who promptly processed to Clerk of the Appellate Court of Illinois and Judge McBride granted appeal to proceed and appointed counsel.

4. However, Court appointed counsel determined appeal was untimely and filed to dismiss appeal and (3) Judge Panel dismissed appeal.

5. I brought Petition For Rehearing timely.

6. About (30) days later my Petition For Rehearing was denied, however, clerk of the Appellate Court failed to notify me.

6. So after about 10 months I filed a Motion For Clarification of the Status of Appeal and the clerk forwarded me letter advising and Court Order dated almost 11 months prior that Petition For Rehearing had been dismissed, as such, I thought

Affidavit (continued) Page 2 of 2

It futile to file a late Petition for leave to Appeal to Illinois Supreme Court and brought Federal Habeas Petition in this Court instead.

7. Being unlearned in the field of law I had no knowledge that by skipping over Illinois Supreme Court and bringing Federal Habeas Petition I had procedurally defaulted.

8. However, once I learned I was in procedural default, I filed late Petition for leave to appeal to the Illinois Supreme Court, and filed motion in this Court to hold habeas proceedings in abeyance determining Supreme Court decision.

9. This Court denied Habeas Petition as successive and denied motion to hold proceedings in abeyance.

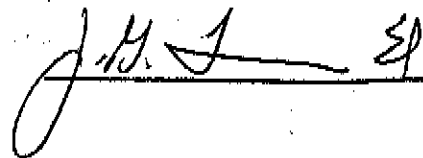
10. I took appeal, but realized appeal is a procedural default also and should be dismissed.

11. Accordingly, I voluntarily move to dismiss appeal herein.

12. Further to sayeth not.

Subscribed and sworn to
before me on the ____ day
of _____,

Respectfully submitted,

 J. H. J.

NOTARY PUBLIC

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

U.S. ex rel. James G. Turner et al.
Plaintiff,

v.

Donald A. Hulick, et al.
Defendant

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) Case No. 08 C 2264
)
)

PROOF/CERTIFICATE OF SERVICE

TO: M. W. Dobbins/Clerk
U.S. District Court
219 S. Dearborn St.
Chgo, IL 60604

TO: Lisa Magidan
Attorney General
100 W. Randolph St.
Chgo IL 60601

TO: _____

TO: _____

PLEASE TAKE NOTICE that on June 13, 2008, I have placed the documents listed below in the institutional mail at Menard Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service: Motion for Voluntary dismissal of Appeal

Pursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/1-109, I declare, under penalty of perjury, that I am a named party in the above action, that I have read the above documents, and that the information contained therein is true and correct to the best of my knowledge.

DATE: 6/13/08

James M. J. [Signature]
NAME: James G. Turner et al.
IDOC#: N-01161
Menard Correctional Center
P.O. BOX 761
Menard, IL 62259